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IN THE NATION | Tom Wicker

Leakers Beware

Why are press associations hesitating to join the American Civil Liberties Union in appealing the two-year prison sentence of Samuel Loring Morison for leaking classified photos to Jane's Defense Weekly, a British magazine? This may be the clearest Government challenge to freedom of the press since the Pentagon Papers case in 1971.

Mr. Morison is not a spy, and no one claims he is. He did not pass information to a foreign power, and was not charged with doing so. Witnesses said he did not damage national security, and none established that he did; certainly, his intent was the opposite. He is a whistle-blower who thought Americans needed to know more about a Soviet naval buildup attested by the photos he provided to Jane's, which later were reprinted widely.

Yet he was charged, convicted and sentenced under provisions of the Espionage Act, the first time a conviction under that act has been obtained for actions like Mr. Morison's. The resulting precedent turns a law against real spies — the kind who apparently have been operating effectively within the security establishment for years — into a jerry-built official secrets act. Congress has consistently refused to pass such a law, which would be aimed at preventing and/or punishing the public release of classified information.

This is, or should be, of extreme importance to the press. If it is a crime to make classified information available to the public, as the Morison precedent suggests, the Government's ability to conceal any information is greatly increased. Just classify it, whether secrecy is warranted or not, and the threat of criminal prosecution will become a far stronger deterrent to potential whistle-blowers than any now in existence.

That that is precisely the Government's purpose — to shut off leaks to the press, whether or not of real security information — is not in doubt. When Mr. Morison's lawyers advocated probation for their client, Assistant United States Attorney Michael Schatzow replied that unless Mr. Morison was sent to prison, other Government employees would "think that what he did was not very serious, that the court does not think it was very serious, and that it is O.K. to do it."

Mr. Schatzow also decried with false logic the idea that the case threatened the press. The leaked photos had been "published by The Washington Post and the TV networks, and nobody has prosecuted them," he said. No, not in this case, because the identity of the leaker was not in question. But suppose the Government did not know who had released classified information?

The Morison verdict is dangerous

In such an event, the Government could demand that a publication or broadcaster, or a reporter or editor, identify the source of leaked material. If that person, or persons, refused to do so, they could be ordered to by a court; if they still refused, they could be jailed for contempt of court — as numerous reporters who protected the identity of a source already have been jailed.

So the Morison prosecution and conviction is a double-edged sword; it threatens both whistle-blower and reporter with imprisonment for serving the public's right to know.

Not only has Congress refused to adopt that kind of policy by passing an official secrets act; even the Reagan Administration has rejected a proposal for such a law — offered, predictably, by William J. Casey, the C.I.A. Director. He would have made it a crime for a Government employee to release any information that "reasonably could be expected to damage the national security" — splendidly fuzzy language covering just about anything.

But what neither Congress nor the Administration would do openly, the Justice Department and a Federal court, in the Morison case, have done indirectly. They may well have worsened the real problem, however, which is the Government's inability to keep real secrets from real spies.

That's because the Government already has too many people classifying too much information, whether or not it is truly sensitive — and too few security officers to clear, with sufficient competence, the millions of Government employees who require access to classified information. Yes, millions: in June 1985, 330,000 people were cleared for "confidential" information, 3.5 million for "secret," 600,000 for "top secret" and 100,000 for "sensitive compartmented" information. Applications for new clearances were coming in at the rate of 200,000 a year; and Government employees were being re-checked, on the average, only about every 17 years.

But the Morison case probably will increase the classification of documents, in order to make it a crime to release them, as well as the number of persons requiring clearances. That will make it harder to identify the moles within; but leakers and reporters beware! □